

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

DELAWARE STATE UNIVERSITY CHAPTER  
OF THE ASSOCIATION OF AMERICAN  
UNIVERSITY PROFESSORS,

Charging Party,

v.

DELAWARE STATE UNIVERSITY,

Respondent.

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Review of the Hearing  
Officer's Decision

U.L.P. No. 95-10-159

**BACKGROUND**

The Delaware State University Chapter of the American Association of University Professors ("AAUP") is an employee organization within the meaning of Section 1302(h) of the Public Employment Relations Act ("PERA"), 19 Del.C. Chapter 13 (1994) and is the exclusive bargaining representative of Delaware State University's full-time "voting" faculty as defined by the Delaware State University, including Departmental Chairpersons and Academic Directors, professional librarians, counselors, research faculty, extension agents, department and library assistants, and half-time faculty.

In a decision dated November 18, 1997, the Hearing Officer ruled Delaware State University is a public employer within the meaning of 19 Del.C. §1302(n).

**DISCUSSION**

The facts in this dispute are clearly set forth by the Executive Director in his April 1, 1996, Decision on Motion to Dismiss (PERB Binder II @ 1377-1385) and in the Hearing Officer's November 18, 1997 decision (PERB Binder III @ 1651-1668) and are accordingly incorporated herein as part of this decision.

By letter dated November 26, 1997, Delaware State University requested review by the full Board of the Hearing Officer's November 18, 1997 decision. Specifically, the University appealed the following two conclusions of law:

(1) Delaware State University is a public employer within the meaning of 19 Del.C. §1302(n); and

(3) By refusing to comply with the AAUP's request for information which was reasonably related to its responsibilities as an exclusive bargaining representative, Delaware State University failed to meet its duty to bargain in good faith, in violation of 19 Del.C. §1307 (a)(5).

### DECISION

The Board carefully reviewed the entire record in this case and voted unanimously to uphold the Hearing Officer's decision as to both Conclusions of Law #1 and #3.

### CONCLUSION OF LAW # 1:

The Executive Director's April 1, 1996, Decision on Motion to Dismiss provides a succinct review of the Board's rationale in arriving at its decision to uphold the decision. We find particularly pertinent and enlightening, the reasoning stated on pages 1380-1385 (Binder II) which reads in part:

In the Brotherhood of Railroad Signalmen case (Supra.), because neither the term "State" or "agency" was defined, the PERB looked beyond the simple words of the statutory definition of "public employee" and "public employer" to the intentions of the General Assembly in enacting the Public Employment Relations Act, in order to determine the scope of its jurisdiction. In finding that state agencies were included within the term "State" as used in the definition of "public employer", it held:

From the history of reform in the State's public sector labor laws culminating with the passage of the PERA in 1994, it is apparent that the Public Employment Relations Act was not intended to strip away the limited rights which all State employees enjoyed under prior laws while at the

same time depriving them of the expanded rights previously accorded other public sector employees by the General Assembly under mirror legislation [the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1982,1989) and the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (1986)]

The Executive Director's discussion reviewing the specific facts surrounding the establishment, administration and funding of Delaware State University reflects the opinion of this Board, is dispositive of the issue and is accordingly incorporated as part of this decision.

### **CONCLUSION OF LAW #3:**

Having supported the Executive Director's finding that Delaware State University was a "public employer" within the meaning of 19 Del.C. §1302(n), the Board then reviewed the issue raised by Conclusion of Law #3, namely that Delaware State University failed to meet its duty to bargain in good faith in violation of 19 Del.C. §1307(a)(5). Once again without repeating the comprehensive discussion of this issue, (PERB Binder III, pages 1651-1668), we find Hearing Officer's decision reflects the opinion of this Board, is dispositive of the issue and is accordingly incorporated as part of this decision.

Several statements included within the Hearing Officer's decision are particularly noteworthy:

... A broad disclosure rule is crucial to the development of a meaningful collective bargaining relationship as contemplated by the statute. ... The Union is entitled to information if it is helpful in evaluating the merits of a contractual claim or has any relevance to the determination as to whether or not to file a grievance.. The standard to be applied in determining the relevance of the requested information is a broad and liberal one. Information pertaining to employees within the bargaining unit is presumptively relevant and should be provided, particularly where it aids the arbitral process.

The exchange of information does not threaten the grievance process nor does it affect the authority of an arbitrator to make a binding construction of the parties' collective bargaining agreement. In fact, the liberal exchange of information actually aids the collective bargaining process in that it allows both parties to

sift out unmeritorious claims. The goal of exchanging information is to encourage resolution of disputes, short of arbitration, so that the system is not "woefully overburdened. [citations omitted]

The Board upholds the Hearing Officer in rejecting DSU's argument that this matter should properly be deferred to the parties' contractual arbitration process. PERB's limited discretionary deferral policy is inapplicable in this situation because:

... a resolution of the substantive grievance would not resolve the statutory charge. Further, pre-arbitral deferral, in this case, would serve to defeat the purpose of the statute. PERB is charged with facilitating harmonious and cooperative relationships and is empowered to prevent the commission of any unfair labor practice. The continuing duty to bargain in good faith is statutory and failure to do so results in the commission of an unfair labor practice...

The record includes lengthy discussion regarding Delaware State University's claim of confidentiality of information requested. A claim of confidentiality must be proven by the party asserting the claim. McDonald Douglas Corp., 224 NLRB 881, 93 LRRM 1280 (1976). As pointed out in the Hearing Officer's opinion,

A general claim of confidentiality must fail where there is no evidence the records requested are otherwise kept confidential for other purposes during the normal course of business, and that employees either actively sought to keep the records confidential or that an employee would reasonably expect the information to be confidential during the normal processing of a grievance... Delaware State University has not substantiated its general claim of confidentiality... The merit award process requires review of the applications by numerous persons including departmental chairperson, administrative directors, deans, vice presidents and the President of the University. Further it is illogical that the substance of successful merit award applications would be confidentiality if the program is intended to reward outstanding service and to motive other employees to higher levels of contribution."

The November 18, 1997 decision of the Hearing Officer is, accordingly affirmed.

At the request of Delaware State University, the Public Employment Relations Board granted its request that it be relieved from the obligation of

posting the Notice of Determination in the above-captioned matter during the pendency of its appeal. This decision was communicated to both parties by letter dated December 24, 1997. Now that the Board has decided the appeal, Delaware State University is hereby ordered to:

1) Cease and desist from refusing to provide AAUP with information which is reasonably related to its duty of representation.

2) Post the Notice of Unfair Labor Practice for a period of thirty (30) days in all places where notices affecting bargaining unit employees are normally posted and in the administrative offices of the employer.

**IT IS SO ORDERED.**

/s/ Henry E. Kressman

HENRY E. KRESSMAN, Chair

/s/ John D. Daniello

JOHN D. DANIELLO, Member

/s/ James F. Maher

JAMES F. MAHER, Esq., Member

**Date: February 5, 1998**